

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Ellington Broadcasting, WPRQ-LD & WHCQ-LD) CSR-8933-M
v.) MB Docket No. 17-58
Cable One Inc.) CSR-8935-M
) MB Docket No. 17-96

MEMORANDUM OPINION AND ORDER

Adopted: September 11, 2017

Released: September 12, 2017

By the Senior Deputy Chief, Policy Division, Media Bureau:

1. Ellington Broadcasting, licensee of Low Power Television Stations WPRQ-LD, Clarksdale, Mississippi (WPRQ-LD) and WHCQ-LD, Cleveland, Mississippi ("WHCQ-LD), filed the above-captioned complaints against Cable One Inc. (Cable One) for its refusal to carry WPRQ-LD and WHCQ-LD on its cable systems serving Cleveland and Clarksdale, Mississippi, respectively.1 Cable One filed oppositions to the complaints.2 On July 24, 2017, the Media Bureau issued separate orders that provisionally granted WPRQ-LD's and WHCQ-LD's carriage requests.3 However, our orders provided Cable One the opportunity to provide conclusive evidence that WPRQ-LD and WHCQ-LD do not provide a good quality signal to Cable One's Cleveland and Clarksdale headends.4 As a result of the additional testing, the parties now agree that WPRQ-LD fails to satisfy the requirements for carriage under our rules.5 Thus, the WPRQ-LD Complaint will be denied. However, the parties agree that WHCQ-LD does satisfy the requirements for carriage under our rules.6 Consequently, the WHCQ-LD Complaint is granted.

2. Both the Communications Act of 1934, as amended, and the Commission's rules require the carriage of "qualified" low power television (LPTV) stations in certain limited circumstances.7 The parties agreed that WPRQ-LD and WHCQ-LD satisfied five of the six requirements set forth in the Commission's rules to be considered a qualified LPTV station.8 Thus, the only issue before the

1 Ellington Broadcast Complaint, filed March 28, 2017 (WPRQ-LD Complaint); Ellington Broadcast Complaint filed April 12, 2017 (WHCQ-LD Complaint).

2 Opposition of Cable One, filed April 21, 2017; Opposition of Cable One Inc. filed April 21, 2017.

3 In the Matter of Ellington Broadcasting, WPRQ-LD v. Cable One Inc., 2017 WL 3167720 (F.C.C. July 24, 2017) (WPRQ-LD Order); In the Matter of Ellington Broadcasting, WHCQ-LD v. Cable One Inc., 2017 WL 3167717 (F.C.C. July 24, 2017) (WHCQ-LD Order).

4 Id.

5 47 CFR §76.56(d).

6 Id.

7 47 U.S.C. § 534(c)(1); 47 CFR §76.56(b)(3).

8 47 CFR § 76.55(d).

Commission was WPRQ-LD's and WHCQ-LD's ability to provide a good quality signal to Cable One's Cleveland and Clarksdale headends. As discussed extensively in our Orders, Cable One's testing failed to comply with the Commission's standards for good engineering.⁹ Nevertheless, because WPRQ-LD and WHCQ-LD are only allowed to provide an over-the-air signal to Cable One's headends, there was a possibility that WPRQ-LD and WHCQ-LD could not provide a good quality signal.¹⁰ Therefore, our order provisionally granted WPRQ-LD and WHCQ-LD carriage while also providing Cable One the opportunity to conduct additional testing.

3. Pursuant to our orders, on August 9, 2017, Cable One had a definitive engineering study of WPRQ-LD's and WHCQ-LD's signals conducted in accordance with good engineering practices in the presence of a representative from Ellington Broadcasting.¹¹ That testing indicated that WPRQ-LD's signal level was -61.90 dBm.¹² Under the Commission's signal testing standards, a station must have a signal measurement of at least -61 dBm in order to provide a good quality signal.¹³ WPRQ-LD now concedes that it does not provide a good quality signal to Cable One's Cleveland headend.¹⁴ As a result, WPRQ-LD is not entitled to carriage on Cable One's Cleveland cable system and we deny its complaint.

4. WHCQ-LD's signal testing indicated that its signal measurement was -54.83 dBm.¹⁵ Under the Commission's signal testing standards, WHCQ-LD provides an acceptable quality signal.¹⁶ Consequently, Cable One has agreed to begin carrying WHCQ-LD on or before September 22, 2017, on its Clarksdale system subject to WHCQ-LD indemnifying Cable One for any increased copyright costs because WHCQ-LD's signal will be distant for the communities of Batesville (MS0063), Courtland (MS0518), Pope (MS0519), and unincorporated Panola (MS0520), Mississippi.¹⁷ Section 614(b)(10)(B) of the Communications Act provides that "a cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17 as indemnification for any increased copyright liability resulting from carriage of such signal."¹⁸ Ellington objects to the indemnification requirement asserting that it does not desire carriage in the out of market communities.¹⁹ Cable One states

⁹ WPRQ-LD Order at ¶¶ 8-10; WHCQ-LD Order at ¶¶ 7-9.

¹⁰ WPRQ-LD Order at ¶ 14; WHCQ-LD Order at ¶ 14.

¹¹ Cable One Retest Letter at 1 and Exhibits A and B, filed August 14, 2017 (Cable One Retest).

¹² *Id.*

¹³ See 47 C.F.R. § 76.55(d) note to paragraph d.

¹⁴ WPRQ-LD has a construction permit (Construction Permit File #0000014075) pending before the Commission to increase its authorized operating power to 3kW. Ellington Response to Cable One's Retest at 3. WPRQ-LD has indicated an intention to seek reconsideration of our order once it can satisfy the signal strength level. *Id.* However, because it failed to satisfy the LPTV requirements, its complaint must be denied. If, as a result of a subsequent increase in its authorized operating power, WPRQ-LD satisfies the LPTV must carry qualifications, it should follow the procedures for seeking carriage as specified in our rules. See 47 C.F.R. § 76.55(d). Additionally, WPRQ-LD questions whether Cable One is carrying two qualified LPTV stations on its Cleveland system since WNBD-LD is over 35 miles from Cable One's Cleveland headend. *Id.* However, Cable One asserts that WNBD-LD is a qualified LPTV because its transmitter is only 27.71 miles from Cable One's Cleveland headend. See Cable One Inc. Letter at n. 8, filed August 31, 2017, citing *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd 6567, 6858, n. 1981 (2014). We need not decide this issue because WPRQ-LD concedes that it is currently not a qualified low power television station.

¹⁵ Cable One Retest at 1-2.

¹⁶ See 47 C.F.R. § 76.55(d).

¹⁷ See Cable One Inc. Letter at 2, filed August 31, 2017.

¹⁸ 47 U.S.C. § 534(b)(10)(B).

¹⁹ Ellington Response to Cable One Retest at 2, filed August 22, 2017.

that all of the communities, including the out of market communities, are served by its Clarksdale headend.²⁰ The Commission has stated that “in situations where copyright liability is incurred for carriage in some of the communities served by a single cable system, the broadcaster must indemnify the operator for the copyright liability for carriage in any community served by the system, unless the operator is able to provide different channel line-ups to different communities.”²¹ Cable One asserts that “[a]s currently configured, the cable system headend is not technically equipped to segregate retransmitted signals amongst the various communities it serves.”²² Accordingly, if WHCQ-LD desires carriage on Cable One’s Clarksdale headend, it will be subject to carriage in all areas served by that headend, including those that may be distant. Further, WHCQ-LD is required to indemnify Cable One for any actual increased copyright liability incurred because of such carriage.²³

5. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. §534, and Sections 76.55(d) and 76.56(b)(3) of the Commission’s rules, that the provisionally granted must carry complaint filed by Ellington Broadcasting for WPRQ-LD **IS DENIED**.

6. **IT IS FURTHER ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. §534, and Sections 76.55(d) and 76.56(b)(3) of the Commission’s rules, that the must carry complaint filed by Ellington Broadcasting for WHCQ-LD **IS GRANTED**.

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission’s rules.

FEDERAL COMMUNICATIONS COMMISSION

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Media Bureau

²⁰ See Cable One Retest at 2-3; Cable One Letter at 2, filed August 31, 2017.

²¹ See *Implementation of the Cable Television Consumer Protection Act of 1992 Broadcast Signal Carriage Issues*, 9 FCC Rcd 6723, 6736, n. 191 (1994).

²² See Cable One Inc. Letter at 2, filed August 31, 2017.

²³ Thus, it is a business decision within WHCQ-LD’s purview, whether to pursue carriage and indemnify Cable One for any increased copyright liability or to forego carriage and avoid any increased copyright liability.